



Office of the Attorney General

State of Texas

February 28, 1994

DAN MORALES
ATTORNEY GENERAL

Mr. John Weddle
Legal Advisor
Dallas County Sheriff's Office
Frank Crowley Courts Building
133 North Industrial Boulevard
Dallas, Texas 75207-4313

OR94-087

Dear Mr. Weddle:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), Government Code chapter 552.¹ We assigned your request ID# 23866.

The Dallas County Sheriff's Office has received a request for a certain mug shot. You object to release of the requested information and claim that section 552.108 of the act excepts it from required public disclosure.

Section 552.108 excepts from required public disclosure:

- (a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime
- (b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution.

Traditionally, when applying section 552.108, our office has distinguished between cases that are still under active investigation and those that are closed. Open Records Decision No. 611 (1992) at 2. In cases that are still under active investigation, this section excepts from disclosure all information except that generally found on the first page of the

¹We note that the Seventy-third Legislature repealed V.T.C.S. article 6252-17a. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

offense report. *See generally* Open Records Decision No. 127 (1976) (citing *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976)). As a general matter, once a case is closed, information may be withheld under section 552.108 only if the law enforcement agency demonstrates or the information demonstrates on its face that its release "will unduly interfere with law enforcement and crime prevention." *See* Attorney General Opinion MW-446 (1982); Open Records Decision Nos. 444, 434 (1986); 366 (1983) at 3; 216 (1978) at 3 (citing *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)). Whether information falls within the section 552.108 exception must be determined on a case-by-case basis. Open Records Decision Nos. 434 (1986) at 2; 287 (1981) at 1-2. In Open Records Decision No. 616 (1993), this office determined that a mug shot taken in connection with an arrest for which the arrestee was subsequently convicted that did not relate to an active criminal investigation, and where it was not demonstrated that its release would unduly interfere with law enforcement, was not protected from public disclosure under section 552.108 of the Government Code.

You advise us that the mug shot at issue here relates to a case "which has been finally disposed of through the court process." On the other hand, you also suggest that the mug shot might relate to a pending investigation of an unrelated offense in Oklahoma. We conclude, however, that you have not sufficiently demonstrated that release of the mug shot would unduly interfere with law enforcement or crime prevention.² Accordingly, the mug shot may not be withheld under section 552.108 of the act and must be released.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

² We note that the need of another governmental body, other than the one seeking a ruling, may provide a compelling reason for nondisclosure of information under section 552.108. Open Records Decision No. 586 (1991); *see also* Open Records Decision No. 562 (1990) at 10-11 (information relating to an ongoing *federal* criminal investigation in the possession of a state law enforcement agency may be withheld under section 552.108, even though the state investigation is closed). In this case, you have not provided us with sufficient information to determine whether the state of Oklahoma has a law enforcement interest in nondisclosure of this mug shot.

LRD/GCK/rho

Ref.: ID# 23866

cc: Mr. Michael Sechrist
Vice President/News Director
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